

May 25, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th St. SW
Washington DC 20554

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Dear Ms. Salas:

The Givens & Bell Division of Blue Ridge Video Services (Givens & Bell), formerly Givens & Bell Inc., submits the following Opposition, Protest, and Multiple Petition to Deny. We are sending this in reply to, and protest of, the Commission's actions in the Memorandum Opinion and Order of April 19, 2000, regarding the proceeding in MM Docket 86-440, the applications for construction permit for a new full power television station at Charlottesville, Virginia. We certify that we are also mailing true copies to the following interested parties:

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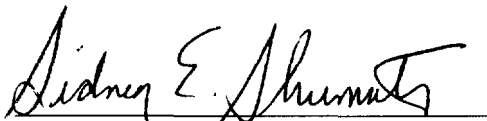
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A handwritten signature in black ink, reading "Sidney E. Shumate". The signature is written in a cursive style with a horizontal line underneath.

Sidney E. Shumate
Principal Owner, Givens and Bell Division of Blue Ridge Video Services

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In re: Memorandum Opinion and Order,)	FCC 00-149
Released April 28, 2000)	
)	
Regarding the Applications of)	MM Docket No. 86-440
)	
Achenar Broadcasting Company)	File No. BPCT-860410KP
And)	
Lindsay Television, Inc.)	File No. BPCT-860410KQ
And)	
The Givens & Bell Division of)	File No. BPCT-961023KF
Blue Ridge Video Systems)	
And)	
The Petition of Givens & Bell)	Submitted March 13, 2000
for Rule Making Seeking a New Channel)	
As per Public Notice DA 99-2605)	

For Construction Permit for a new Television Station on Channel 64, Charlottesville, Virginia

To: The Commission

**OPPOSITION TO, PROTEST OF, AND PETITIONS OF THE GIVENS & BELL
DIVISION OF BLUE RIDGE VIDEO SERVICES (GIVENS & BELL)**

REGARDING

**THE GRANT OF THE JOINT PETITION FOR APPROVAL OF SETTLEMENT
AGREEMENT, THE GRANT OF LEAVE TO AMEND APPLICATION, AND THE
GRANT OF THE CONSTRUCTION PERMIT FILED JANUARY 30, 1998 BY ACHENAR
BROADCASTING COMPANY (ACHENAR) AND LINDSAY TELEVISION, INC.
(LINDSAY).**

INCLUDING:

**A PETITION TO RECALL AND REMAND THE CONSTRUCTION PERMIT, FILED
JANUARY 30, 1998 BY ACHENAR BROADCASTING COMPANY AND LINDSAY
TELEVISION, INC., AND IT'S MODIFICATION AMENDMENT, FOR FURTHER
ENGINEERING STUDY,**

AND

**A JOINT AND SEPARATE PETITION TO PERMANENTLY DISMISS THE
CONSTRUCTION PERMIT, FILED JANUARY 30, 1998 BY ACHENAR
BROADCASTING COMPANY AND LINDSAY TELEVISION, INC. AND IT'S
MODIFICATION, FOR LACK OF TECHNICAL MERIT.**

AND

**A JOINT AND SEPERATE PETITION FOR THE COMMISSION TO IMMEDIATELY
GRANT THE MARCH 13, 2000 MULTIPLE-ACTION PETITION OF GIVENS & BELL
WHICH WAS SUBMITTED IN RESPONSE TO PUBLIC NOTICE DA 99-2605, ACCEPT
BPCT-961023KF FOR FILING, AND SPECIFY A PERIOD OF TIME FOR GIVENS &
BELL TO SUBMIT AN AMENDMENT.**

BACKGROUND:

On April 19, 2000, the Commission approved the Join Petition For Approval of Settlement Agreement, For Leave to Amend Application, and Immediate Grant of Construction Permit filed January 30, 1998 by Achenar Broadcasting Company and Lindsay Television, Inc.

In this Memorandum Opinion and Order, in paragraphs 12 and 13, the Commission recognized, discussed, and dismissed the recent submission of a competing Application for Construction Permit by Shenandoah Valley Educational Television (Shenandoah), to construct a new, noncommercial educational station on channel 19. Shenandoah never had significant standing in this matter with regard to the Federal Communication Commission's Rules and Regulations; they must have known since signing on W19BB, that the potential for an allotment on Ch. 19, and later, a DTV allotment created as a result of the advanced television proceedings, could force W19BB off of the air. Years ago, when Shenandoah and the Central Virginia Educational Telecommunications Corporation, licensee of WHTJ-TV, Ch. 41, Charlottesville, were competing applicants for Ch. 41, a decision by the state educational authority forced Shenandoah to take "second choice" and to settle for a translator; thus was created W19BB. The fact that W19BB is a 100% translator of Shenandoah's WVPT-TV fine programming, precludes recognition as a Class A television station. The chance of applying for a Channel 14 relocation as mentioned in paragraph 21 provides only a illusory chance of survival for the WVPT translator. The Commission failed to note that with regards to relocating to channel 14, that there

are two other LPTV/Translator stations in Charlottesville; the existing Ch. 64 translator which repeats 100% of the programming of its owner, WHSV-TV in Harrisonburg, and WADA-LP, the PAX affiliate LPTV station on channel 55. WADA-LP has the best local chance of obtaining Class A status, thereby obtaining priority over its competitors in the race to relocate to channel 14. Both Ch. 64 and Ch. 55 are above the core channels, which also gives them priority over the Ch. 19 translator in any race to claim Ch. 14.

In light of its consideration of Shenandoah, it is surprising that the Commission completely ignored the fact that there is another, valid, qualified applicant for channel 64. This other applicant filed in a timely manner during the filing window in 1996, after verifying with the Mass Media Bureau staff that the Achenar and Lindsay applications had been dismissed, and that there were "no current applications recognized as filed or pending" by the Federal Communications Commission for the Channel 64 allotment at Charlottesville, Virginia. The application required, and was immediately preceded by, an accompanying petition for a waiver of the DTV freeze area surrounding Washington, DC, with respect to its effect on the fringe area known as Charlottesville, Virginia. The staff processed the application as having been submitted for filing and assigned it a file number of 961023KF. It was subsequently misfiled as having been submitted for "Charlottesville, WA" and was therefore, subsequently, "lost in the system". Its fate was not known until the contractor entered it into the CDBS system, and the applicant searched for and found the application and the error. The error was brought to the attention of the

staff and corrected in March, 2000, shortly before the applicant's submission of a petition for rulemaking to allot Ch. 19 to Charlottesville, in response to DA 99-2605. We, Givens & Bell, are this applicant. The applications of Achenar and Lindsay were dismissed, as per FCC 91-280, on 9/19/91. While the District of Columbia Circuit Court decision by Judge Sentelle remanding both the Achenar and Lindsay applications to the Commission was decided on August 18, 1995, from the history of this proceeding, it appears that the only action before the Commission regarding this proceeding during the time that the application window was open in 1996, was a series of letters and requests for extension of time to allow the applicants to decide on, and prepare for, their next course of action. The next significant event in this timeline was the petition for leave to amend filed by Lindsay on September 19, 1997.

It is only now that the Commission has seen it's way clear to dismiss the Lindsay application, the only application that had previously been granted in this proceeding, as a result of the combining of forces of Achenar and Lindsay, the two, combative, remaining applicants from 1988. It is interesting to note that William Kennard, Chairman of the Commission, was, as General Counsel for the FCC, "on the brief " before the District Court in this matter; therefore, he should be more familiar than the other Commissioners with respect to the details of this proceeding. While it is not clear to this applicant as to when the Commission officially reinstated the Achenar and Lindsay applications as pending, their status was verified by this applicant to be officially "dismissed" during the 1996 application window.

As such, the Givens & Bell application is, in effect, the senior active application for Channel 64 in Charlottesville, and must be recognized. The Achenar and Lindsay applications, as far as the Commission is concerned, were reinstated long after the 1996 application window closed; at that point, they became competing applications to the Givens & Bell application.

OPPOSITION AND PROTEST:

The Commission's headlong rush to grant the joint agreement of Achenar and Lindsay, without allowing the Givens & Bell application the chance to be considered as per DA 99-2605, runs roughshod over the Commissions' own rules and precedents, and, despite the long history of this proceeding, is, in the opinion of Givens & Bell, significantly more arbitrary and capricious than the decision to deny the original applications of Achenar and Lindsay.

There is little real consideration of the public interest involved at this point; clearly, the sudden rush appears primarily to be due to pressure on a Commission tired of dealing with two aggressive, combative, and litigious applicants each of which has fought for over a decade to "have it their way". The Commission has suddenly been offered a hastily cobbled "combination solution" that appears to be able to put an end to this extended proceeding, satisfy the District Court, and clear the docket. It is understandable as to why the

Commission is anxious to close and be done with this proceeding. To the Commission we must say: This looks too good to be true. Things that look too good to be true rarely are. This is not true.

To provide a first example of why this is “not true”, consider what will happen if the decision in FCC 00-149 is to stand. Lindsay’s application had been granted prior to 1992, was remanded, and effectively reinstated. To continue to ignore or dismiss the Givens & Bell application the Commission will have, by default or action, recognized the reinstated pending status of the Achenar and Lindsay applications, as having occurred prior to the application window in 1996. The combined forces of Achenar and Lindsay can then claim that the Lindsay application, as dismissed in 1991 and remanded by the District Court in 1995, should have been granted and under construction during 1992, and therefore, the Commission must allocate a channel (the most available being Ch. 64) to be assigned to the new combined applicant for use as a DTV transition channel! If the Commission were to balk at this, clearly, based on precedent in this proceeding, it can expect the combined forces of Achenar and Lindsay to require that the Commission defend that decision before the District Court. The Givens & Bell application can make no such claim to have been pending or granted during 1992; it would not expect to also be allotted a separate DTV transition channel. Therefore, this hasty decision does little but create new issues in this proceeding.

To Givens & Bell, it appears clear that Achenar and Lindsay have combined forces primarily for two reasons; one, to avoid an auction, and two,

after having flagrantly and incompetently plagiarized the Givens & Bell application's technical solutions to the NRAO protection problem, to pressure the Commission to grant their application immediately, in order to preclude having to compete against the Givens & Bell application. The Givens & Bell application, having patiently waited for four years to be processed, can now move forward thanks to DA 99-2605, and the subsequent actions of, and precedents set by, the Commission in the Memorandum Opinion and Order, FCC 00-149.

The Commission may have, up to this time, forgotten the Givens & Bell application. The application of Givens & Bell has obviously NOT been ignored by the NRAO, nor has it been ignored by Achenar, nor has it been ignored by Lindsay. Two years after the Givens & Bell application was submitted, Lindsay petitioned the Commission for Leave to Amend Application (received Sept. 19, 1997), followed quickly by a Petition for Waiver of Short Spacing Rules (received Nov. 5, 1997). This was quickly answered by a Petition for Leave to Amend and for Waiver of Short Spacing Rule, submitted by Achenar (received Nov. 19, 1997). Lindsay subsequently submitted a Petition for Acceptance of Television Translator Applications and Request for Waivers. On January 30, 1998, the Commission received a Joint Petition for Approval of Settlement Agreement, for Leave to Amend Application, and for Immediate Grant of Construction Permit, jointly requested by Achenar and Lindsay. We remind the Commission that the engineering sections of the applications and engineering statements supporting the above applications that were submitted after the reinstatement, were prepared by the same engineering firm and were, except for

the name of the applicant, essentially identical; technical details, errors and omissions were therefore duplicated.

The engineering statements submitted by Achenar, Lindsay, and by the combined forces of Achenar and Lindsay, all received by the Commission more than two years after the Givens & Bell application was submitted, blatantly and desperately attempt to copy the engineering solutions first presented and proposed by the Givens & Bell application, a copy of which was submitted to the NRAO in 1996. The Achenar amendment proposes relocation to the same tower as the Givens & Bell application, depends on adoption of the same precedent-based allowable signal level determination methodology, and incorporates the same use of a separate, out-of-phase signal transmitted from a parabolic grid dish antenna incorporated into the antenna array that Achenar and Lindsay proposed in their later Ch. 64 application, to provide a signal null adequate to protect the NRAO facility at Green Bank, West Virginia.

Absent in this error-filled application was the precedent-based methodology incorporated in the Givens & Bell application to measure, fine tune, and verify the effectiveness of the operation of the nulling antenna system. This should have been required of Achenar and Lindsay; its omission should be suspect. Our review of the Achenar engineering exhibit has uncovered several other fatal flaws; we will comment further on the engineering of the Achenar application later in this document.

What should be noted here, is that the Givens & Bell application's engineering plan provided the first, and yet today, the only truly functional and

equitable solution acceptable to both the NRAO and the Commission, to the problem of providing maximum new television service to the Charlottesville area while protecting the interests of the NRAO at Green Bank, West Virginia. The special nulling antenna system proposed in the Givens & Bell application uses tested, established, self-verifying technology and methodology in combination with a acceptable signal interference level based upon previous precedent-setting agreements. Givens & Bell has made every effort to work within the Commission's rules, methodology, and precedents to find and present an acceptable compromise solution. The prior applications of Achenar and Lindsay, despite a decade of effort, had not proposed either individual or co-operative solutions to bring an additional full-power television service to Charlottesville that could satisfy both the NRAO and the Commission. Achenar and Lindsay have spent over a decade in aggressively fighting and litigating against each other and the Commission in order to gain sole control of a construction permit to build Ch. 64 in Charlottesville. The record of this proceeding speaks for itself; the primary reason that this proceeding has dragged on so long has been the unwillingness or inability of Achenar and Lindsay to propose an adequate solution, to accept the Commission's decisions, or to co-operate to create an acceptable solution, until Givens & Bell led the way. Therefore, the Commission should be in no rush to conclude this proceeding on the behalf of Achenar & Lindsay, as the record shows that they have time and again acted against the public interest by demonstrating their willingness to delay, extend, and litigate this proceeding when it was in their individual best interest to do so. The

Commission should not terminate this proceeding without having an acceptable, adequate, and functional engineering solution in place, nor should they rush to terminate this proceeding without giving due consideration and providing due process to the application and petitions of Givens & Bell.

LEGAL ERROR:

We now point out a “small” legal detail missed by the combined forces of Achenar and Lindsay. We mention this in order to demonstrate how little regard or knowledge they have of Charlottesville, it’s local broadcasting history, and the present status of broadcasting in Charlottesville. This detail is that Achenar and Lindsay cannot join forces under the corporate name of “Charlottesville Broadcasting Corporation”; the name is taken.

The Saturday, May 13, 2000 “Daily Progress”, Charlottesville’s dominant newspaper, owned by Media General, pointed out in a front page article entitled “Area is close to gaining new commercial TV station” that the existing Charlottesville Broadcasting Corp. has a long history as a local broadcaster in Charlottesville; it is the licensee of WINA-AM, WQMZ-FM and WKAV-AM. The article, by Reed Williams, a staff writer, quoted an “FCC attorney, who requested anonymity”, as stating that “The real issue is [that Charlottesville Broadcasting] is a radio station operator, and these people are proposing to be a television operator” and that “Whether they have the authority to [have the same name], as far as the state of Virginia is concerned, is another matter”. It is with good reason that the FCC attorney requested anonymity. A check of old

Commission records would not only have shown that not only did Charlottesville Broadcasting Corporation once hold a construction permit to build a television station on Ch. 29 in Charlottesville, it now owns WKAV, which under previous ownership and call letters (WELK) was the “mother station” whose ownership and staff started and built WVIR-TV, Ch. 29, in the empty shoe store next door. Obviously, to have held the construction permit, Charlottesville Broadcasting Corporation’s charter must allow it to do business in television as well as radio. More significantly, due to the recent passing of Charlottesville Broadcasting Corporation’s long term owner-manager, Laurence “Larry” Richardson, Charlottesville Broadcasting Corporation has relocated its studio operations into the same facilities occupied by Eure Communications’ stations, WWWV and WCHV. It is not inconceivable that at some point in the future it could come under the ownership of a large group owner of radio and television properties; in fact, Charlottesville Broadcasting Corporation has recently submitted an application to the Commission to allow the transfer of ownership of one of it’s stations, WKAV, to Clear Channel Communications, a large national conglomerate that owns both radio and television properties. The extant Charlottesville Broadcasting Corporation may not presently be related to “a television operator” at the moment, but based upon it’s prior involvement in television broadcasting in Charlottesville, it would be foolish to rule out such a possibility in the future.

This “future” could be immediate; among the “granted actions” in Memorandum and Order FCC 00-149, under “Ordering Clauses”, in paragraph 28

it states: “that the application for a construction permit for channel 64 of Achenar Broadcasting Company (File No. BPCT-860410 KP), **as amended to substitute Charlottesville Broadcasting Corporation**, IS GRANTED to the extent reflected herein.” The extant Charlottesville Broadcasting Corporation is recognized before the Commission as the current licensee of WINA, WQMZ-FM and WKAV, and as a former holder of a construction permit to build a television station in Charlottesville. Therefore, due to the error of Achenar and Lindsay in claiming a name already taken, by the actions taken in FCC 00-149, the Commission has placed the construction permit into the hands of the extant Charlottesville Broadcasting Corporation. In the newspaper article mentioned above, WINA General Manager Dann Miller is quoted as saying “I wouldn’t mind if they gave [the station] to us.” If the Commission does not immediately rescind FCC 00-149, by the required strict reading of the Memorandum and Order Ordering Clauses, it will be Mr. Miller’s “us” and not Achenar and Lindsay who hold the construction permit. Givens & Bell, however, endeavors to make this point moot; we, in this document, petition that, and will make the case that, this Memorandum and Order should be rescinded, first for additional engineering study, and then, as a result of the study, the Achenar (and Lindsay) applications should be subsequently and permanently dismissed.

The newspaper article also continues: “Gene Bechtel, of Bechtel & Cole, a Washington law firm that has represented Lindsay Communications since 1986, said he didn’t know the name was taken and said the firm would check with the State Corporation Commission.” A telephone call to the State Corporation

Commission of the Commonwealth of Virginia quickly and easily verified that “Charlottesville Broadcasting Corporation” was taken, the name submitted must be the exact name of the corporation as stated in its articles of incorporation, and that similar or identical name combinations, especially where two corporations are chartered to do similar or the same business, will be rejected. The first, non-binding, step in approaching the Commonwealth of Virginia State Corporation Commission to form a Corporation is to request a name check; it appears that Achenar and Lindsay have not done their most basic legal homework in this matter. A copy of the newspaper article can be seen in Appendix A.

A PETITION TO RECALL AND REMAND THE CONSTRUCTION PERMIT, FILED JANUARY 30, 1998 BY ACHENAR BROADCASTING COMPANY AND LINDSAY TELEVISION, INC., AND IT'S MODIFICATION AMENDMENT, FOR FURTHER ENGINEERING STUDY.

Givens & Bell hereby submits A Petition to Recall and Remand the Construction Permit, filed January 30, 1998 by Achenar Broadcasting Company and Lindsay Television, Inc. And its Modification Amendment, for further engineering study. Givens & Bell does so, based upon:

- (1) A self-documented error by Mr. M. M. McKinnon, evident in his "Comments on Technical Specifications" attached to each of the Achenar applications. This error in mathematical procedure cannot but cause a failure to detect a fatal cascade of errors in the math of the applications.

In "EXHIBIT 1, Comments on Technical Specifications," which is incorporated in and referred to in the approved application for construction permit and it's modification, Mr. M. M. McKinnon, of the Mass Media Bureau engineering staff, states in the third paragraph that "for the site coordinates given in the technical specifications, the true azimuth is 293.09 degrees (the specifications indicate 293.18 degrees).

The "specifications" Mr. McKinnon refers to can be found in Appendix 1, Page 2, a.k.a. Technical Specifications, Page 2, of the Petition for Leave to Amend and for Waiver of Short Spacing Rule, as submitted by Achenar. Givens & Bell has duplicated the path calculations with the results being that we have verified that the specification azimuth of 293.18 degrees, is correct.

Givens & Bell has also discovered what we believe to be the cause of the error in Mr. McKinnon's calculations. On November 15, 1988 the largest radio telescope at Green Bank, the 300-foot transit telescope, collapsed. The co-ordinates at the base of this telescope were: North Latitude, 38 degrees, 25 minutes, and 42 seconds, West Longitude, 79 degrees, 49 minutes, 55 seconds. In the National Technical Information Service (NTIS) Tech Note 101, Transmission Loss Predictions for Tropospheric Communications Circuits, Volume I, the reference on which Longley –Rice RF diffraction calculations are based, it requires the use of Great Circle path calculations for determining trans-horizon paths with distances exceeding 70 kilometers. Calculating a great circle path from the proposed Achenar transmitter site tower at Carter's Mountain to these coordinates, produces an azimuth of 293.09 degrees. While Givens & Bell used a proprietary worksheet to calculate this result, we have included in Appendix B, copies of verification calculations made using the Distance and Azimuths program accessed via the Audio Services Division website at: www.fcc.gov/mmb/asd/bickel/distance.html .

Unfortunately, these co-ordinates are out of date. During the construction of a new, replacement "largest radio telescope" at a different location within the Green Bank compound, Wesley Sizemore, Interference Officer with the NRAO, on December 2, 1994, notified Mr. Sid Shumate, now of Givens & Bell, that the co-ordinates of the new radio telescope would be North Latitude 38 degrees, 25 minutes, and 59 seconds, West Longitude, 79 degrees, 50 minutes, 24 seconds; and that all subsequent quiet zone calculations would be based upon these new

receive co-ordinates, and the maximum sensitivity specification of the new radio telescope under construction.

Using the new, up-to-date co-ordinates, the results of a Great Circle calculation of the proper azimuth gives a result of 293.18 degrees, verifying the azimuth stated at one location in the Achenar application. As a result, any check of the application path, the Longley-Rice diffraction calculations, the “depression angles” of the extant Ch. 64 and Ch. 19 translator sites and the determination of the resultant residual RF power presently transmitted to the NRAO’s most sensitive site, i.e. the signal level that the new station must not exceed toward Green Bank, and all subsequent path loss calculations toward Green Bank, clearly must be called into question and rechecked by the NRAO, then rechecked and reviewed by the Commission technical staff, before this application can be granted. We must most strongly recommend that this be done, as Givens & Bell has found significant technical errors in this application, and its subsequent modification requests, which the Commission staff apparently did not discover. We will reveal and discuss them later in this document, after the second petition statement.

- (2) A failure by the technical staff of the Commission and/or the National Radio Astronomy Observatory Interference Office to require the inclusion of the customary initial field strength measurement used to fine-tune the operation of, and to measure the effectiveness of, the proposed nulling antenna system.

It is a customary and established precedent, that when constructing a UHF television transmitter or translator utilizing the nulling antenna technology

proposed in the most recent Achenar and Lindsay applications, to require the use of a calibrated, real time measurement of signal strength to fine-tune the nulling antenna system. This procedure, as specified and required in the Givens & Bell application, is normally accomplished by (a) measuring the signal strength at full power from the main antenna with no signal applied to the nulling antenna, to establish a reference level, then (b) aligning the nulling antenna, while adjusting the strength and phase of the nulling signal to produce and measure the maximum null produced by the nulling antenna. In this specific case, this measuring station should be located at the location where the Great Circle path from the Achenar tower site to the new NRAO largest radio telescope passes over the first mountaintop; more specifically, where the signal diffracts over the south side of Calf Mountain, where dips down toward Jarman Gap. This site will not be hard to get to, as it is a short walk north up the Appalachian Trail from the Jarman Gap parking lot on the Shenandoah Parkway. This is the established methodology followed by Mr. Sid Shumate to align the one-kilowatt Ch. 28 UHF translator transmission station at Massanutten Peak, inside the NRAO quiet zone, between Harrisonburg and Elkton, in Virginia. This methodology was specified and executed under the direction and observation of Mr. Wesley Sizemore, the NRAO Interference Officer, who attended, offered direction, and observed the signal strength measurements at the field measurement site. In fact, the main antenna in this case more than met the gain specification stated by the manufacturer; so much so that the signal splitting device was returned to the factory and reworked to increase the available percentage of signal diverted to the nulling antenna, in

order to achieve the peak null. Because of this, it was necessary to schedule a second adjustment and measurement session after the splitter could be reworked. This experience demonstrated the absolute need, when dealing with this type of antenna system, of requiring the use of an initial adjustment session utilizing a field strength measurement to tune and verify the operation of the system. We strongly recommend the requirement that this system be so tested. Mr. Shumate, of Givens & Bell, has extensive experience in designing, constructing and operating UHF television and television auxiliary microwave radio facilities, including in Virginia, atop Carter's Mountain in Charlottesville at the eastern edge of the Quiet Zone, at Bear Den and at Massanutten Peak, inside the quiet zone, and in West Virginia, atop Cross Mountain, near Lewisburg, and atop Keeney's Knob, near Alderson, on the west side of the Quiet Zone. Each of these installations had to meet certain specifications to protect the NRAO. Based upon his extensive field experience, Mr. Shumate is of the considered opinion that this antenna system, either in the form proposed for Ch. 64 or for Ch. 19, because of its specific and severe aiming requirements, and the potential effect of tower structure proximity effect in modifying the stated pattern of the specified side-mount antenna once installed on location, (and not considering at this point the physical limitations of the tower structure specified in the application), cannot be designed and installed such that it produces adequate, much less optimum, results, if there is no opportunity and means to fine tune and verify operation of the system. Givens & Bell is of the opinion, having studied the engineering applications of Achenar and Lindsay, that without a requirement for verification,

Achenar and Lindsay are unlikely to volunteer to fine tune and verify operation of the nulling antenna system to the NRAO or to the Commission. Givens & Bell have already volunteered to do so, in their original application.

**A JOINT AND SEPARATE PETITION TO PERMANENTLY DISMISS
THE CONSTRUCTION PERMIT, FILED JANUARY 30, 1998 BY
ACHENAR BROADCASTING COMPANY AND LINDSAY TELEVISION,
INC. AND IT'S MODIFICATION, DUE TO LACK OF TECHNICAL
MERIT.**

Givens & Bell hereby submits a Petition to Permanently Dismiss the Construction Permit, Filed January 30, 1998 by Achenar Broadcasting Company and Lindsay Television, Inc., and it's Modification Amendment, due to multiple fatal technical errors in the applications, including, but not limited to,

- (1) Attempting to obtain a construction permit to place an antenna on an inadequate and/or non-extant portion of a tower for which permission to construct or modify cannot be obtained:

Givens & Bell's application for construction permit was the first of the applications under consideration in this proceeding, to propose an antenna location on the former RAM Communications tower site, now known as American Tower site number: VA 090228, located on Carter's Mountain; the FCC antenna registration number for the tower at this site is: #1015412. Achenar and Lindsay also later proposed to relocate to this tower.

The Achenar and Lindsay applications differ from the Givens & Bell application in that the Achenar and Lindsay applications propose a different location on the tower for their antenna. Their amendments to applications propose, on page two of the "ENGINEERING STATEMENT COVERING AMENDMENT TO APPLICATION FOR CONSTRUCTION PERMIT FOR ACHENAR BROADCASTING COMPANY" (the Engineering Statement) which is attached to and part of "SUPPLEMENT TO JOINT PETITION FOR

APPROVAL OF SETTLEMENT AGREEMENT FOR LEAVE TO AMEND APPLICATION AND FORM IMMEDIATE GRANT OF CONSTRUCTION PERMIT”, that: “The antenna proposed is a custom Andrew ATW-24G-C1, or similar TV antenna. This antenna has a peak power gain of 36.5 in the horizontal plane. The antenna will be top mounted on the existing guyed tower.” However, on page one it had already referred to “the existing structure which will be modified to support the proposed antenna.” Later in this same document, on page 4, under the heading “ENVIRONMENTAL IMPACT STATEMENT”, it states: “Achenar proposes to modify a guyed tower, 91.4 meters in height, by top mounting a UHF TV antenna for a total height above grade level of 108.8 meters.” These statements are either misleading or inconsistent, and they serve to obfuscate the intent of Achenar and Lindsay. Do they propose to mount their antenna on the existing guyed tower? Or do they propose to modify the tower and top-mount the antenna on the modified tower? For different reasons, the answer is the same in both cases: they cannot.

The specified antenna is an Andrew ATW-24G-C1. A copy of the physical specifications, and a visual depiction of this particular antenna design series, can be found in Appendix C. This standby-class antenna is strictly designed for, and available only for, side mounting. This specific class of antennas, the ATW- R series, lacks the internal bracing structure, and the external combination ladder and brace, that would allow it to be used as a top mount antenna. The lack of a integral climbing antenna would also preclude it’s use as a top mount antenna, as there would be no provision to allow access to the upper

portions of the antenna, or the top mounted beacon, for maintenance. There is one reference in the Andrew literature referring to a tower top mount of this antenna, this, however, requires the use of an external bracing structure similar to a small tower section, which can cause reflections that modify the coverage pattern and reduce the depth of any null in the side-mounted antenna's horizontal pattern. We will discuss this point in greater detail, later in this document.

It would be inadvisable, and, in fact, would clearly not be allowable under the present tower structural design standard, EIA/TIA 222-F, to "top mount" any available UHF antenna with a peak power gain of 36.5 and the power handling capability required in this application, atop the "existing tower". As can be seen in the photographs in Appendix 3, the top existing portion of this tower consists of a relatively thin, approximately 6 to 8-inch diameter steel mast, designed only to support, as it does, the four FM antenna bays belonging to radio station WWWV-FM, and the tower beacon.

The tower in question was fabricated by ROHN; it is a model 90, of a ROHN standard-strength, hollow-leg, off-the shelf catalog design and construction; the FM antenna mast atop it is also of a standard ROHN design. Photographs of the existing structure may be seen in Appendix E.

Based upon his experience in studying the structural analysis of, and engineering a refitting of a similar nearby ROHN model 90 tower to support the present WVIR-TV antenna, and upon having made a preliminary site inspection, Mr. Sid Shumate, a graduate engineer and experienced broadcast construction and maintenance engineer whose work is long recognized before the Commission,

also a principal with Givens & Bell, and presently a Senior Appraiser of broadcast radio and television properties, states that it would obviously not be possible to mount the specified or a similar antenna atop this existing structure and meet the requirements of the existing tower standard, EIA/TIA 222-F. He continues to state that the FM tower mast is, from an allowable load standpoint, probably near to, or fully “loaded” by the existing side-mount antenna; this portion of the structure cannot possibly meet the present structural design standard requirements to support such a UHF antenna in high wind or with ice loading. A structural tower analysis would have to be performed to determine how the tower could be modified to support this antenna and its associated transmission line in addition to the present, extensive antenna and transmission line load on this tower; the results of this analysis would most probably require replacement of the FM tower mast with standard or extra-strength sections of ROHN model 90 tower, and possible relocation of some of the tower guy anchors and/or adding additional guying and torque arm bracing, and may require additional strengthening of existing tower sections by adding bracing or replacing sections with extra-strength sections.

Can and will the tower be modified to support the specified antenna?

Certainly, the applications of Achenar and Lindsay appear to suggest this possibility. Refer to the “FIGURE 3, VERTICAL PLAN SKETCH” which is included in the Engineering Statement. This sketch, which is consistent with the statement on page 1, and inconsistent with the statement on page 2, is both consistent (shows a modified tower) and inconsistent (shows the specified antenna side mounted, NOT top mounted, on the tower structure) with the statement on

page 4. Figure 3 hints (by it's absence) that the FM tower mast has, or will have been removed, or that it does not exist.

It will not be possible to modify the tower structure. To do so would require obtaining the permission and co-operation of the owners of WWWV-FM. To replace the FM tower mast with standard ROHN model 90 tower sections, would have a severe and detrimental effect on the coverage pattern of WWWV-FM. Before the tower could be modified, it would be necessary for WWWV-FM to obtain a construction permit to modify it's coverage pattern; and it would be necessary to obtain the additional co-operation of WWWV-FM to allow the removal it's antenna, to have WWWV-FM temporarily broadcast from an alternate location or be off-the air during the tower modification, and then allow the replacement of its antenna on the modified tower structure. When Givens & Bell approached Brad Eure, CEO and owner of Eure Communications, licensee of WWWV-FM, and inquired of him as to whether Achenar or Lindsay had discussed this with him, he stated that there had been no contact, and that the answer, in any case, to the question of co-operating to allow modification of the tower would have been "no".

The Givens & Bell application demonstrates that there exists an alternative antenna location that can be used for Ch. 64 (or 19) to broadcast from this tower. Therefore, Eure Communications cannot be coerced to co-operate with Achenar and Lindsay under the Commission's rules and regulations preventing a broadcast licensee from denying access to a uniquely qualified transmission site. Since the existing structure cannot support the proposed or a similar antenna, and the co-

operation of Eure Communications cannot be obtained to allow modification of the tower, Achnar and Lindsay cannot top mount the specified antenna, or any similar antenna, atop the specified structure. This constitutes the first fatal technical error in their application.

(2) Failure to adequately verify and maintain verification of the availability of the proposed antenna location:

In verifying it's own continuing access to this tower, Givens & Bell has discovered that the ownership of the tower and associated tower site has been transferred from RAM Communications to American Tower. Givens & Bell contacted American Tower's site leasing agents and discovered that no record of Achenar or Lindsay's contact with the previous owners was transferred to the present owners; and that no binding contract, understanding, or letter of intent between Achenar or Lindsay and RAM Communications was transferred in the sale of the tower and site. Therefore, the information stated by Achenar and Lindsay in their applications, regarding verification of the site availability, is woefully out of date; and the leasing agents of American Tower report that there have received no contact from Achenar and Lindsay. Achenar and Lindsay have not adequately verified, as required by the Commission, the continuing availability of their proposed tower site. The leasing agent for American Tower is not, in fact, anxious to make this tower top available for use as a television transmission site; in fact, although the space on the tower where Givens & Bell

proposes to locate is still available, the current American Tower leasing agent has suggested that Givens & Bell consider relocating to the nearby, short, squat, but very strongly built, abandoned AT&T microwave relay tower that American Tower also controls and is making available for lease. Since the current American Tower leasing agent has stated that Achenar and Lindsay have had no contact with him, it would appear, from the recent conversations with this agent, that Achenar and Lindsay may have significant difficulty in re-establishing the availability of the tower-top location they propose to utilize. Achenar and Lindsay should be required to demonstrate and defend the basis on which they state that the proposed antenna location is still available; if, as Givens & Bell has reason to believe, they cannot, this will constitute the second fatal technical error in their application.

(3) Failure to properly calculate the azimuth angle from the W19BB translator to the new Green Bank radio telescope, causing a cascade failure of the calculations upon which the entire engineering solution presented in the engineering sections of the application, is based.

On page 1 of the Appendix I, **“ENGINEERING STATEMENT CONCERNING USE OF NTSC CHANNEL 19 IN PLACE OF NTSC CHANNEL 64 AT CHARLOTTESVILLE, VIRGINIA, MAY 1998**, which is attached to and part of the SUPPLEMENT TO JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT, FOR LEAVE TO AMEND

APPLICATION AND FOR IMMEDIATE GRANT OF CONSTRUCTION

PERMIT, filed June 24, 1998, it incorrectly states that “W19BB radiates an ERP of 22 kW on the 292.7 degree azimuth bearing to the observatory.” The correct azimuth bearing from W19BB, whose co-ordinates are 37 degrees, 58 minutes, 58 seconds North Latitude and 78 degrees, 29 minutes, 0 seconds West Longitude, to the aforementioned co-ordinates of the new “largest” radio telescope at Green Bank, WV, calculated by the required Great Circle method (for reasons also previously discussed), generates an azimuth of 293.32 degrees; this was also verified using the Commission’s website, and the results are available in Appendix B. The azimuth to the “collapsed” radio telescope site is 293.22 degrees, so the cause of the error is not the same as the cause of Mr. McKinnon’s error. Givens & Bell has again attempted to duplicate the errant calculation in order to determine the cause of this error; by forcing our proprietary worksheet program to determine the azimuth to Green Bank utilizing crude, straight line trigonometric calculation, as per the short-distance method proscribed in Commission Rules and Regulations section 73.611, it produces a result of 292.8 degrees; close enough to the errant angle to suggest the cause of the error. As previously mentioned, the only bearing determination method allowed by Tech Note 101, section 6, for Longley-Rice trans-horizon paths exceeding 70 kilometers, is the Great Circle method.

A half-degree difference in the azimuth, and the derived elevation to the first diffraction point, does not make a significant difference in the determination of the amount of power directed toward the NRAO. To verify this, Givens & Bell

have correctly calculated the amount of signal leaving the W19BB antenna at the correct azimuth and elevation angle. The half-degree difference in azimuth does become relevant, and it can and does make a significant difference, when it comes to determining the path attenuation of the trans-horizon diffraction path between W19BB and the radio telescope. This is due to variations in the terrain height of each of the several diffraction points along the 129 kilometer path. At a distance of 28 kilometers, the approximate distance to the first diffraction point, a difference of half a degree in azimuth can make a significant difference as to where the signal crosses the top of the mountains, especially since these paths cross the first mountain near a dip in the ridge called Jarman's Gap.

In performing the verification calculations mentioned in the preceding paragraph, Givens and Bell did discover a significant error by Achenar and Lindsay in determining the amount of signal leaving the W19BB antenna at the correct azimuth and elevation angle toward the new and most sensitive radio telescope at Green Bank. The determination of 22 kilowatts of existing signal is incorrect, and the difference in azimuth is not the reason. The Givens & Bell calculations show that the 22 kilowatt ERP result stated in the Achenar and Lindsay application is off the mark by 13.47 kilowatts!

Unfortunately for Achenar and Lindsay, the entire set of calculations upon which Achenar and Lindsay derived their copy of the Givens & Bell engineering solution required getting the azimuth angle to Green Bank right to start with; and correctly calculating the power leaving the W19BB antenna in the direction of Green Bank. The entire, derivative set of calculations, which leads to the

determination of the allowable transmitted signal toward Green Bank, and the resultant antenna design, are faulty, and must be reworked from scratch. The engineering effort of Achenar and Lindsay must therefore, once again be sent back to square one. This constitutes the third fatal technical error in their application.

(4) Either abandonment of good engineering practice, evidenced by a failure to re-check and correct the subsequent calculations when an error in azimuth for the maximum null was correctly noted, or a failure to candidly expose the negative results of the recalculation to the Commission:

On page 1 of the Appendix I, **“ENGINEERING STATEMENT CONCERNING USE OF NTSC CHANNEL 19 IN PLACE OF NTSC CHANNEL 64 AT CHARLOTTESVILLE, VIRGINIA, MAY 1998**, which is attached to, and is part of, the SUPPLEMENT TO JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT, FOR LEAVE TO AMEND APPLICATION AND FOR IMMEDIATE GRANT OF CONSTRUCTION PERMIT, filed June 24, 1998, it incorrectly states that “Therefore, an ERP of 21 kW (22 kW reduced by 0.2 dB) is proposed at the 292.7 degree bearing to the observatory”. The bearing stated here is incorrect. As explained previously, the correct bearing from the proposed Achenar and Lindsay antenna location to the new radio telescope is 293.18 degrees. Since the allowable ERP determination must be recalculated anyway due to the errors in determining the azimuth and

signal strength levels from W19BB toward Green Bank, the reason for mentioning this derivative bearing error is not moot; it is to point out a highly suspect inconsistency in the application.

The inconsistency is that this azimuth is correctly stated in the specifications found in Appendix 1, Page 2, a.k.a. Technical Specifications, Page 2, of the Petition for Leave to Amend and for Waiver of Short Spacing Rule, as submitted by Achenar. This demonstrates that this error was, at some point, caught by Communications Technologies, Inc., and the azimuth to the NRAO was correctly stated in the Technical Specifications, Page 2, in the application. This should have caused a cascade effect on the application's engineering. The path calculations should have been redone, the allowable signal strength should have been restated, and the antenna design for the Ch. 19 antenna should have been adjusted to compensate. Mr. McKinnon's error in determining this azimuth kept the Commission from taking note of these errors, and of the failure of Achenar and Lindsay to take the proper steps to correct these errors.

Based upon a preliminary duplication, correction, and review of the calculations upon which this application is based, Givens & Bell proposes that a Commission investigation of the failure to disclose and correct these errors will lead to the discovery of either an abandonment of good engineering practice in the preparation of this application, or, that Achenar and Lindsay failed to candidly disclose and correct these errors; with the motive being that the corrected calculations and resultant re-design would produce new results contrary to their best interests. This Lack of Candor before the Commission, regarding the failure

to disclose such a critical technical failing in this application, constitutes the fourth fatal flaw in this application.

(5) The inability of the proposed antenna technology to protect NRAO operations as per the agreement between Achenar, Lindsay and the NRAO, when installed in accordance with the construction permit application, and operating at the stated maximum ERP on the application.

Let us assume, only for the sake of discussion, that Achenar and Lindsay find a way to obtain permission to modify the tower at their proposed transmission site, in order to properly side mount the specified antenna.

The Achenar and Lindsay application specifies that the proposed Ch. 19 antenna, an Andrew ATW-24G-C1 (Custom), would be mounted on the tower so that the direction of the main lobe is directed toward 115 degrees True, which is east-southeast, approximately toward the direction of Richmond, Virginia, and away from the City of License, Charlottesville. Since we have already pointed out that this particular antenna is of a side-mount only design, we will assume that the antenna will be side mounted near the top of the tower, as shown in the aforementioned Figure 3 in the Achenar application. This tower does now exist, and, for this discussion, we will assume that it will have been significantly modified prior to mounting the antenna, by extending it from its present height to 108.8 meters, as shown in the aforementioned Figure 3 of the Achenar application.

It would be very poor engineering practice to mount a side-mount, directional UHF slot antenna so that the main signal lobe, or such that any major signal lobe of the antenna, if there is more than one, is aimed toward the supporting tower structure. The resultant reflections off of the metal tower legs can significantly distort the signal pattern from the antenna, and can even cause signal to re-enter the antenna and create a high VSWR problem in the antenna system that can shorten the life of the transmission line, antenna, and final amplifier stages of the transmitter, and result in the transmission of a distorted signal due to signal reflections in the transmission line. Therefore, we will assume that the antenna will be side mounted on the most eastern, and preferably north-eastern, leg of the tower. This is in order to provide a clear path for as much as possible of the directional main signal lobe from this antenna, while also maintaining as clear as possible a path from the antenna to the main community to be served. As a result, the signal path from the “rear” of the antenna, where the signal null that protection of the NRAO is dependent upon is located, passes thru and reflects off of the tower, it’s cross bracing, and the antenna mounting infrastructure. The distortion that this would create, would not be seen on a test bed at an antenna manufacturing plant. The observation of the signal null at the antenna factory test range, upon which Mr. McKinnon, in his statement, plans to rely upon to verify the capability of the antenna to protect the NRAO, will mean little. The effect of the reflections to reduce the null in the antenna pattern, would negate the effectiveness of the antenna to protect the NRAO once the antenna is mounted in place on the tower. This failing of the overall system design would

not become apparent on the test range; it might not have even been noticed until the station was on the air and causing interference to radio telescope operations at Green Bank.

Alternately, Andrews offers the use of a special system designed for mounting atop a tower structure, called an ALPac System; this system combines a different series of Andrew antenna, the ALP series, in combination with a specially designed and constructed tower section designed to minimize the effect of signal reflections. The sales literature promoting this system, however, sadly also demonstrates why it will not save the day in this specific case.

We now direct you to view this sales literature in Appendix D for the ALPac System. At the bottom of the page, two diagrams compare the signal pattern of the antenna with, (the dotted line) and without (the free space condition, or solid line) the special supporting structure. Pay particular attention to the “Andrew Cardioid ALPac System” diagram; it shows two nulls, of similar origin and operation as the single null of the proposed Andrew ATW-24G-C1 (Custom) antenna. We can safely assume that this is the best result that can be expected; Andrew should, as this is Andrew’s sales literature, be attempting to demonstrate show the best possible results from this particular combination of antenna and tower. Despite this, it can be seen that the presence of the tower mount structure significantly weakens the depth of the two nulls in the diagram; the scale marked on this field strength diagram is in dB, and we can observe that the nulls lose about 5 dB of depth. In addition, the location of the bottom of the null moves with respect to the rest of the antenna pattern, in this case, a significant 2 or 3

degrees; this adds an additional dB of signal where the null point was. If the null in the Achenar and Lindsay antenna would have barely met the requirement to meet the 21 kilowatt ERP maximum toward Green Bank on the test range, without the special tower support, then once the antenna is mounted on a special tower support, the field strength of the signal toward Green Bank would increase a minimum of 6 dB. A 6 dB increase, i.e. a doubling of field strength, equates to a four-times increase in power; therefore, 21 times 4 equals 84; the 21 kilowatt ERP would become a 84 kilowatt ERP! For comparison, this is far more than twice the 36.6 kilowatt maximum ERP of W19BB. Unfortunately for Achenar and Lindsay, this was a best case scenario; by mounting the specified antenna on the side of a standard Rohn Model 90 tower section, one would expect an even worse result, creating electronic echos as shown in the additional diagrams and related articles and papers in Appendix D. If this antenna were to be mounted so that the “back side” had a clear path to Green Bank, the signal reflections from the main lobe off of the tower legs would create the same, and probably even more severe, effect as the reflections thru the tower. The Achenar-Lindsay engineering solution, simplified as it was for Ch. 19 to depend upon the null of the main antenna alone, could have worked only if a true stand-alone top-mount antenna, such as an Andrews ATW (not G)-series or AGW-series design of antenna had been utilized, and mounted by itself atop the tower structure, as the nearby WVIR-TV antenna is mounted atop it’s identical Rohn model 90 tower.

It is little wonder that Achenar and Lindsay did not, as did the Givens & Bell application, volunteer and incorporate the means to measure and fine tune,

and then verify, the operation of this antenna system once installed; the antenna manufacturer's own sales literature gives away the fact that this particular antenna cannot provide adequate protection to the NRAO once it is side-mounted on a tower structure. This is the fifth fatal flaw that we have revealed in the application.

The applications and agreements approved by the Commission in FCC 00-149 are severely flawed, with problems ranging from the simple legal detail of failing to perform a routine check on the availability of a proposed corporate name, to multiple, complex engineering errors, each of which constitutes a fatal technical error in the application. The Commission has, in the past, screened and rejected such applications for having even one technical error as serious as any of the five we have brought to the attention of the Commission; taken as a whole, the technical applications of Achenar and Lindsay continue to be an unworkable disaster. After fourteen years of trying, Achenar and Lindsay have once again failed to present to the Commission a workable engineering solution that adequately protects the interests of the NRAO, satisfies the Commission, and can therefore serve the public.

Based upon their demonstrated, bumbling inability to produce a workable solution, we suggest that to allow Achenar and Lindsay to build and operate a third commercial analog television station during the dawn of digital, in the highly competitive broadcast environment that is the Charlottesville radio and television market, going up against Charlottesville's long established NBC affiliate, it's now NBC-associated PAX affiliated LPTV station on Channel 55,

and the local radio stations that are being bought up by large national conglomerates, would be like taking two aggressive, contentious guppies and dropping them into a tank of piranha. Their effort would not long survive.

The Givens & Bell application, filed in September of 1996, continues to patiently await your consideration. It is still the first, and still the only, application to present a workable technical solution in this proceeding. The final, pitiful, desperate attempt of Achenar and Lindsay to copy and bastardize this solution, and then present the results as a workable solution, should be recalled and swept away by the Commission, in order to allow the only qualified applicant, the only applicant who has co-operatively worked with and within the Commission's rules and procedures and precedents to present a workable solution, to move forward. Givens & Bell awaits the window opportunity to submit a Ch. 19 amendment to the application that Givens & Bell already has on file. To these ends we again petition:

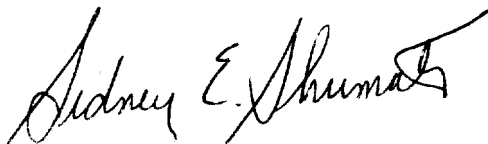
A JOINT AND SEPARATE PETITION FOR THE COMMISSION TO IMMEDIATELY GRANT THE MARCH 13, 2000 MULTIPLE-ACTION PETITION OF GIVENS & BELL WHICH WAS SUBMITTED IN RESPONSE TO PUBLIC NOTICE DA 99-2605, ACCEPT BPCT-961023KF FOR FILING, AND SPECIFY A PERIOD OF TIME FOR GIVENS & BELL TO SUBMIT AN AMENDMENT.

Givens & Bell reiterates it's petition, submitted March 13, 2000, to the Commission, for Rule Making Seeking a New Channel As per Public Notice DA 99-2605, to immediately accept BPCT-961023KF for filing and recognize it's rightful status in proceeding 86-440. Upon the completion of the grant of the

three petition action items submitted in our petition, portions of which were already acted upon and either made moot, waived or granted by the actions taken in the Memorandum Opinion and Order of April 19, FCC 00-149. As soon as the Commission opens the application window authorized by DA 99-2605, Givens & Bell will submit an amendment to its application to relocate to channel 19.

It is time, not to look back to the days of NTSC; it is time to move this proceeding into the digital future. Givens & Bell plans to incorporate into this modification application, a request to build Ch. 19 as a DTV station, as allowed for in DA 99-2605. We also expect to incorporate a proposal that will utilize the multiple-channel carrying capability of DTV to consider and incorporate the interests of WVPT-TV, the non-commercial station whose translator, W19BB, now occupies channel 19 at Charlottesville, VA, as per the advisement of the Commission.

Respectfully Submitted by:

A handwritten signature in black ink, appearing to read "Sidney E. Shumate". The signature is fluid and cursive, with a large, stylized initial 'S'.

Sidney E. Shumate, Principal Owner

dated:

Givens & Bell Division of Blue Ridge Video Services

tsunami@tidalwave.net